

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Telephone Number Portability)

CC Docket No. 95-116

RM 8535

To: The Commission)

REPLY COMMENTS OF
THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.

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THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.**

The National Cable Television Association, Inc. ("NCTA"), by its attorneys, hereby files its Reply Comments in response to the Commission's First Report and Order and Further Notice of Proposed Rulemaking ("Further Notice")^{1/} in the above-captioned proceeding.

I. INTRODUCTION AND SUMMARY

NCTA agrees that the correct starting point for the Commission is the statutory directive that number portability costs be recovered in a "competitively neutral" manner.^{2/} Indeed, the very thrust of this provision is to promote robust facilities-based local service competition so that subscribers can reap the benefits of lower prices, improved service quality and service innovations. Following these guiding principles, NCTA urges the FCC

^{1/} In the Matter of Telephone Number Portability, Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 95-116, RM 8535, FCC 95-284 (Released July 2, 1996) ("Further Notice").

^{2/} 47 U.S.C. §251(e)(2), added by Telecommunications Act of 1996 ("1996 Act").

to adopt a mechanism that recovers only shared long-term number portability costs from all telecommunications carriers, including LECs, IXC's, CMRS providers, and resellers, regardless of whether carriers use the master number portability databases. Cost recovery should be based upon the carriers' total gross revenues minus all charges paid to other carriers. Such a policy most fairly reflects carriers' participation in the competitive market and the principle of competitive neutrality. While recovery of shared number portability costs is certainly appropriate, the Commission should require individual carriers to bear all carrier-specific costs directly or indirectly related to number portability. Price cap carriers should not, however, be permitted to treat as "exogenous" any carrier-specific number portability costs.

The Commission should also require the recovery of all long-term number portability costs in accordance with the manner in which the databases are deployed so that regional database costs are recovered on a regional basis. Moreover, given that the utilization of a long-term number portability solution will involve sensitive and proprietary information, including the number and location of a service provider's customers, the Commission should direct a neutral third party or parties, such as the local number portability administrator ("LNPA"), to administer the cost recovery mechanism. Finally, the Commission should require cost recovery over a five-year period so as to spread costs equitably among existing and new carriers and to ensure that the development of competition is not frustrated by the imposition of significant one-time payments.

II. THE FCC SHOULD ADOPT A MECHANISM THAT RECOVERS ONLY SHARED OR COMMON LONG-TERM NUMBER PORTABILITY COSTS FROM ALL TELECOMMUNICATIONS CARRIERS

A. Carriers Should Recover Only the Shared or Common Costs of Number Portability

Section 251(e)(2) of the Communications Act requires the Commission to implement a competitively neutral mechanism for imposing the costs of establishing number portability on all telecommunications carriers.^{3/} In keeping with the 1996 Act's focus on opening local markets, the competitive neutrality requirement is intended to ensure that competition is not impeded by apportioning number portability costs in an unfair or discriminatory fashion.^{4/}

NCTA supports the Commission's tentative conclusion that a number portability cost recovery mechanism should comply with two basic guiding principles: first, the mechanism should not afford any service provider an appreciable, incremental cost advantage over another service provider when competing for a specific subscriber; and second, the mechanism should not disparately affect the ability of competing service providers to earn a normal return.^{5/} Application of these principles to a long-term cost recovery method for number portability is essential to ensure that competition for customers is fair and open to all

^{3/} 47 U.S.C. § 251(e)(2).

^{4/} The 1996 Act employs a similar yardstick for measuring carrier contributions for the preservation and advancement of universal service. Section 254(b)(4) requires that all providers make an equitable and nondiscriminatory contribution for maintenance of universal service support. 47 U.S.C. § 254(b)(4). Pursuant to this requirement, the Commission has tentatively concluded that the administration of the universal service fund must be "efficient, fair, and competitively neutral." See In the Matter of Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking and Order Establishing Joint Board, CC Docket No. 96-45, FCC 96-93 at ¶ 128 (rel. Mar. 8, 1996).

^{5/} Further Notice at ¶ 210.

carriers and that no carrier is economically disadvantaged. Adherence to these principles also will diminish the possibility that the cost recovery mechanism becomes an impediment to the availability of number portability to the maximum number of subscribers possible.

Consistent with these principles, NCTA supports the comments of Teleport and other local competitors who argue that only the common or shared costs associated with number portability be recovered from all telecommunications carriers.^{6/} The Commission should not permit individual carriers to recover from carriers as a group any carrier-specific costs directly or indirectly related to number portability. While cost recovery of facilities shared by all telecommunications carriers for providing long-term number portability is consistent with the principle of competitive neutrality, carrier-specific facilities such as switch software are highly individualized and must be customized according to each carrier's network and operations. The intrinsic benefits derived by each carrier from such individualized investments are not shared with any other carrier. By requiring each carrier to bear its own infrastructure investment costs, moreover, the Commission will ensure that each carrier will make efficient infrastructure decisions.^{7/}

ILEC assertions that carriers should be able to recover all carrier-specific direct costs of number portability,^{8/} whether through the Commission's proposed "pooling"

^{6/} See, e.g., Teleport Comments at 4-6; MFS Comments at 2-4.

^{7/} See Teleport Comments at 8.

^{8/} See, e.g., BellSouth Comments at 6-7; Bell Atlantic Comments at 4.

mechanism^{9/} or through other similar recovery methods, ignore the inefficiencies that would result from such a policy.^{10/} A pooling mechanism for the recovery of carrier-specific costs -- whether direct or indirect -- will improperly reduce any carrier incentive to minimize the costs of number portability.^{11/} Consistent with the Commission's mandate that cost recovery not give one service provider an "appreciable, incremental cost advantage over another service provider," individual carriers should be required to bear all carrier-specific costs directly or indirectly related to number portability.^{12/}

B. Shared Costs Should Be Paid By All Carriers

In its Further Notice, the Commission requests comment on the appropriate distribution among carriers of the costs of facilities shared by all telecommunications carriers for the provision of long-term number portability.^{13/} Specifically, the Commission seeks input on whether shared facilities costs should be recovered from only those carriers using regional number portability databases, or whether such costs should be allocated across the

^{9/} See, e.g., NYNEX Comments at 9-10. The Commission's pooling approach would require carriers in a given region to first pool their carrier-specific number portability costs, and then spread these costs among all carriers providing and using number portability based on some allocator -- such as gross revenues or number of lines. See Further Notice at ¶ 221.

^{10/} See, e.g., AT&T Comments at 14; TW Comm Comments at 13-14; Teleport Comments at 7-8.

^{11/} See AT&T Comments at 14.

^{12/} For similar reasons, the Commission should not mandate an "end user surcharge" as proposed by the ILECs. See, e.g., Ameritech Comments at 8 (proposing that the FCC require recovery of shared and direct carrier-specific number portability costs through a mandatory, state or regional surcharge per access line assessed over a period of three years).

^{13/} Further Notice at ¶ 212.

entire spectrum of telecommunications carriers regardless of whether they utilize the databases or not.^{14/}

Like Time Warner Communications Holding, Inc. ("TW Comm"), NCTA supports a policy of including all telecommunications carriers in the pool of participants across which shared facilities costs are spread, whether or not they make use of the portability databases.^{15/} As a threshold matter, this method of cost recovery is fully consistent with the 1996 Act, which does not differentiate between market segments or classes of carriers, but rather requires that the costs of number portability be recovered from "all telecommunications carriers in a competitively neutral manner,"^{16/} rather than from any single group of carriers or customers.

Distinguishing among carriers or classes of carriers would directly contravene the 1996 Act's plain language and thwart Congress' pro-competitive goals. As TW Comm has noted, recovering costs from all telecommunications carriers also makes practical sense because it provides that the benefits of long-term number portability will be recognized by "subscribers of all services provided by telecommunications carriers."^{17/}

^{14/} Id.

^{15/} See TW Comm Comments at 7-8.

^{16/} 47 U.S.C. § 251(e)(2) (emphasis added).

^{17/} See TW Comm Comments at 8.

C. Shared Number Portability Costs Should Be Recovered from Telecommunications Carriers Based on Net Revenues

NCTA supports the Commission's tentative conclusion, and the recommendation of many local competitors,^{18/} that the costs of shared number portability facilities should be allocated in "proportion to each telecommunications carrier's total gross telecommunications revenues minus charges paid to other carriers."^{19/} NCTA agrees with the Commission that this "net revenue" approach should be adopted because it best comports with the principles of competitively neutral cost recovery and cost causation.^{20/}

The use of a net revenue-based allocator is optimal because it equitably allocates costs in proportion of the size of each telecommunications provider; minimizes the incentive and ability of carriers to gain an improper cost advantage over other service providers; and is relatively easy to administer.^{21/} Other proposed calculation mechanisms do not meet these criteria.

For example, some ILECs have suggested that the Commission allocate shared costs in proportion to gross retail revenues with no reduction for charges paid to other carriers.^{22/} As the Commission and other commenters have rightly noted, however, intercarrier payments

^{18/} Further Notice at ¶ 213. See also TW Comm Comments at 8-9; Teleport Comments at 4-6; MFS Comments at 6-7.

^{19/} Further Notice at ¶ 213.

^{20/} Id.

^{21/} See TW Comm Comments at 8.

^{22/} See, e.g., Bell Atlantic Comments at 5-7; Ameritech Comments at 5-6; NYNEX Comments at 7-9.

for access charges and interconnection must be subtracted from gross revenues in order to avoid imposing a double payment burden.^{23/}

On similar grounds, the Commission should reject an allocation methodology based on the number of access lines served by each carrier. A per-line charge will apportion a disproportionate amount of the shared costs on local providers and not on all telecommunications carriers, as required by the plain language of the Telecommunications Act.^{24/} Finally, unlike the Commission's proposed net revenue approach, other proposed recovery mechanisms would be more difficult to calculate and administer.

D. Shared Number Portability Costs Should Be Recovered on a Regional Basis Over a Five-Year Period

NCTA endorses TW Comm's proposal that database administrator(s) should allocate and recover shared long-term number portability costs on a regional, rather than a national basis.^{25/} As TW Comm observes, because service management systems ("SMS") are likely to be deployed on a regional basis, it would be simple to allow each regional administrator to recover costs for its geographic area of responsibility.^{26/} Separation of database administration and cost recovery between different entities is unnecessary so long as these functions occur on a coordinated basis. In addition, NCTA recommends that any allocation

^{23/} Further Notice at ¶ 213; Teleport Comments at 6. See also Assessment and Collection of Regulatory Fees for Fiscal Year 1996, MD Docket No. 96-84, FCC 96-295 (rel. July 5, 1996) (calculating common carrier fees on the basis of net interstate revenues in order to "avoid imposing any double payment burden on resellers.").

^{24/} See Teleport Comments at 5-6; MFS Comments at 6.

^{25/} TW Comm Comments at 8.

^{26/} Id. To the extent that such systems are deployed on a state basis, NCTA would not oppose a state based recovery mechanism.

and recovery of the costs of number portability must be handled by an independent third party to ensure that cost recovery and administration do not provide carriers access to proprietary market share data of their competitors.^{27/}

Finally, to further the goal of ensuring that number portability costs are imposed on carriers in a competitively neutral manner, NCTA proposes that the Commission permit the recovery of non-recurring number portability costs through monthly charges levied over a five-year period.^{28/}

E. Price Cap Carriers Should Not Receive Exogenous Cost Treatment for LNP Costs

NCTA opposes the proposal to permit price cap carriers to receive exogenous treatment for any long-term local number portability ("LNP") costs.^{29/} As MCI explained in its comments, any such exogenous cost treatment is improper because LNP costs are not being recovered through existing rates, and, thus, would improperly increase the existing price cap indexes.^{30/} Moreover, as noted by MFS, the FCC's proposed policy of allowing price cap incumbents to treat individual number portability costs as exogenous may provide a mechanism for price cap incumbents to pass on their number portability costs to competitors,

^{27/} The Commission has recognized the value of independent third parties as administrators in the context of long-term support payments and the NECA carrier common line pool. See In the Matter of Ameritech Operating Companies Petition for a Declaratory Ruling and Related Waivers to Establish a New Regulatory Model for the Ameritech Region, Order, FCC 96-58 (Released Feb. 15, 1996).

^{28/} See Further Notice at ¶ 217 (seeking comment on whether non-recurring costs should be recovered in a one-time payment or over time).

^{29/} Further Notice at ¶ 230.

^{30/} See MCI comments at 12-13.

who are unable to engage in the same behavior.^{31/} The Commission should reject its tentative conclusions regarding exogenous costs in order to ensure that carriers recover their number portability costs from services sold to end-users, and not to services sold to competitors.

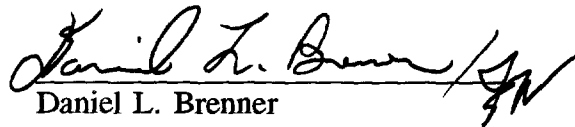
^{31/} MFS Comments at 5.

III. CONCLUSION

For these reasons provided herein, NCTA requests that the Commission implement rules for the recovery of long-term number portability that are consistent with the proposals and recommendations set forth in these Reply Comments.

Respectfully submitted,

NATIONAL CABLE TELEVISION
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A handwritten signature in dark ink, appearing to read "Daniel L. Brenner", followed by a stylized flourish or initials.

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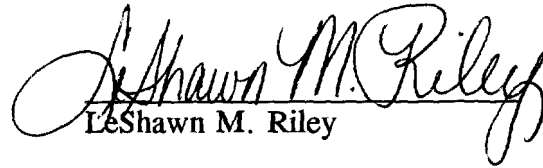
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September 16, 1996

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CERTIFICATE OF SERVICE

I, LeShawn M. Riley, hereby certify that on this 16th day of September, 1996, a copy of the foregoing "Reply Comments of The National Cable Television Association" was delivered by hand or by first-class mail, postage prepaid, to each of the parties listed below.


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